IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2320 OF 2004

Maharashtra Engineering Plastic
and General Kamgar Union. ... Petitioner.

V/s.

M/s.Fire Equipment Corporation
and others. ... Respondents.

V.P.Vaidya for the petitioner.

R.D.Shetty with Ms.Rita Joshi
for respondent Nos.1 to 3.

CORAM: V.C.DAGA, J.

DATED: 6th March 2007.

JUDGMENT

. The present petition is filed challenging the order dated 28th July, 2003 passed in Complaint (ULP) No.151/1995 and subsequent order dated 18th December, 2003 rejecting the Review Application (ULP) No.32/2003, whereby prayer for review of the order dated 28th July, 2003 came to be rejected by the Industrial Court. By the impugned order the Industrial Court has directed payment of wages as per the notification applicable to the residuary industry.

FACTUAL MATRIX:-

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2. The factual matrix reveals that the petitioner-complainant had filed complaint under item Nos.5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("Act" for short to seek wages that were being paid to similarly circumstanced other employees. According to the petitioner, the respondents were paying less wages to the members of the petitioner- union as compared to the wages paid to the workmen who are not members of the union. This act of the employer respondent herein constituted an unfair labour practice under item 5 of Schedule IV of the Act.

3. The petitioner, in the complaint, was also seeking implementation of Minimum Wage Notification as applicable to Power Loom Industry as it was the case of the petitioner that the said notification was applicable to the employees of the respondent- establishment. As such, according to the petitioner, non-payment of the said minimum wages amounts to unfair labour practice under item 9 of Schedule IV of the Act.

4. According to the respondent- employer the

said members of the complainant union were earlier on strike and thereafter did not report for work as such they were not entitled to claim wages equal to the wages given to the other workmen.

5. The parties to the complaint were permitted to lead evidence before the court below.

6. The Industrial Court, after appreciation of evidence and the law governing the subject, recorded findings in the following words:

> In the light of the ratio laid down in the above referred case and looking to the unfair labour practices claimed, the complaint union has discharged burden completely and succeed in establishing that without giving notice of change, the nature of justice and the designation of the concerned workmen for which the present complaint is filed, have, been changed. The Respondents engaged in unfair labour practices covered under item 5 of Sch.IV of the MRTU and PULP Act by showing favour to the set of same workmen regardless of merits while paying wages. The concerned workmen have right to work as their original post as operators when they joins their duty after considerable lapse of time, and entitled to the wages equally paid to other workmen working in the same category. Not paying to the concerned workmen as per their original post and by changing their duty and designation without giving them notice of change, certainly this action on the part on of the Respondents is in violation of the service conditions which amounts to unfair labour practice covered under item

9 of Sch.IV of the MRTU & PULP Act. In this view of the matter, I find substance in the grievance of Complainant Union, therefore, in the result the present complaint deserves to be allowed as per the order passed below:

O R D E R

1. Complaint (ULP) No.151 of 1996 is allowed.

2. It is hereby declared that the Respondents have engaged in unfair labour practices covered under items 5 and 9 of Sch.IV of the MRTU & PULP Act, 1971.

3. The Respondents shall cease and desist from engaging in such unfair labour practices.

4. The respondents are directed to allow the concerned workmen for whom the Complainant Union has filed the present Complaint, to work as Operators and pay wages as per the provisions of the Minimum Wages Act, applicable to the residuary industry from the date of this order.

5. No order as to costs."

7. According to the petitioner, though the Industrial Court came to the conclusion that the respondents were guilty of unfair labour practice under item 5 of Schedule IV of the Act, it has neither granted relief flowing from the said finding to which petitioner-complainant was entitled nor directed payment of wages as per notification applicable to the residuary industry. The petitioner therefore claimed to have filed

review application to seek review of the said order which ultimately came to be rejected. These two orders are the subject matter of challenge in this petition filed under Article 226 of the Constitution of India at the instance of the petitioner- union.

SUBMISSIONS:-

8. Mr.Vaidya, learned counsel for the petitioner has urged that so far as the unfair labour practice covered under item 5 of Schedule IV of the Act is concerned, the same has been established by the petitioner by leading cogent evidence before the Industrial Court. The evidence led before the Industrial Court was accepted by it. It has come to the conclusion that the respondent- employer has committed unfair labour practice under item 5 of Schedule IV.

9. Mr Vaidya further submits that none of the findings suffered by the respondent- employer has been challenged either by filing separate petition or by filing counter affidavit in this petition. In this view of the matter, the findings recorded by the Industrial Court will bind the respondent-employer and the respondent cannot be permitted to

argue contrary to what is recorded in the order by the Industrial Court, that too, after proper appreciation of evidence available on record.

10. Mr.Vaidya submits that in the aforesaid backdrop, if the complainant was successful in demonstrating discrimination made by the respondent- employer between the members of the Union and other similarly circumstanced workmen then, in that event, it was obligatory on the part of the Industrial Court to grant relief as prayed in the complaint.

11. Mr.Vaidya while criticising the order of the Industrial Court urged that it was not open to the Industrial Court to interpret the concept of Minimum Wages Act or provisions thereof and apply the same ignoring the fact that the members of the Union were entitled to have the similar treatment which the other set of 17 workmen were getting. He, thus, submits that the para-4 of the operative part of the order needs to be quashed and set aside and in substitution thereof declaration as prayed by the petitioner/ complainant in the complaint deserves to be granted.

12. Per contra, Mr.Shetty, learned counsel for

the respondent- employer tried to find fault with the findings recorded by the Industrial Court. He tried to contend that other 17 workmen were loyal workers of the establishment since they did not resort to illegal strike. As regards the members of the Union, they had resorted to illegal strike and remained absent from duty almost for a period more than 11 years. They did not turn back to report on their duty. They came to be reinstated only under the orders of the court with continuity of service.

13. Mr Shetty also tried to urge that the other workers were operating machines, however, the members of the petitioner-union had expressed their inability to operate machines. He, thus, urged that the members of the petitioner union cannot be treated on part with the other 17 workmen; who were not on strike. He, therefore, submits that the petition is without any substance and the same is liable to be dismissed.

CONSIDERATION:-

14. Having considered rival submissions advanced by the parties, the submission advanced by Mr.Shetty cannot be accepted on the face of the

finding recorded by the Industrial Court which can be supported on the basis of the material available on record. The respondent- employer has accepted all the adverse findings recorded by the Industrial Court. The respondent- employer did not file any counter petition to challenge the adverse findings recorded by the Industrial Court. In the circumstances, findings recorded by the Industrial Court will bind the respondent-employer and cannot be ignored since the same have become final and conclusive between the parties.

15. If the Industrial Court has recorded finding that the respondent employer has engaged in unfair labour practices under item 5 of Schedule IV of the Act by showing favour to one set of workmen regardless of merits while paying wages to them, then on the face of such findings which have become final and conclusive, the petitioner-union would be well within it’s right to have declaration sought in that behalf together with the relief claimed by it. In the circumstances, clause-4 of the operative part of the impugned order dated 28th July, 2003 stands substituted with the following clause:

"4. The respondents are directed to allow the concerned workmen for whom the complainant- union has filed the present complaint, to work as Operators and pay wages, as are being paid to other 17 similarly placed employees working with the respondent, with effect from the date of the order dated 28th July, 2003."

16. With the aforesaid modification, impugned order dated 28th July, 2003 stands confirmed. Rest of the order stands as it is. Petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

(V.C.DAGA, J.)